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VIA FACSIMILE AND FIRST CLASS MAIL

Mr. Tom Gainer
Oregon Department of Environmental Quality
2020 SW Fourth Avenue, Suite 400
Portland, OR 97201-4987

Re: Crawford Street Corporation Site

Dear Mr. Gainer:

We received your recent letter regarding the revised Preliminary Assessment Sampling and Analysis Plan (the "SAP") for the Crawford Street Corporation Site (the "Site"). The SAP addressed four issues that you raised in your letter of July 24, 2000 addressed to Mr. Cusma. Those four issues were as follows:

1. **Analysis of SS-8 for total and TCLP cadmium and chromium and for polychlorinated biphenyls.** The SAP includes analyses for these constituents.
2. **Collection of proposed samples SS-1, SS-6, and SS-4 on CSC property.** The SAP includes soil samples necessary to assess potential runoff onto the UPRR railroad spur, one of which is located on the City of Portland property.
3. **Soil/sediment samples from beneath the two eight-inch pipes located near the riverbank.** The SAP does not include any samples from beneath the two eight-inch pipes, because there is no evidence of a release or threat of release during CSC's ownership of the Site.
4. **Subsurface soil and groundwater samples from locations of previous facilities.** The SAP does not include any samples from the locations of previous facilities, because there is no evidence of a release or threat of release during CSC's ownership of the Site.

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STOEL RIVES LLP

Mr. Tom Gainer
October 27, 2000
Page 2

In our response, we questioned whether the sampling requested in item numbers 3 and 4 above is required. More specifically, Crawford Street Corporation ("CSC") believes that DEQ has requested these investigations in the absence of any evidence of a release or threat of release in those areas during CSC's ownership of the Site. As you know, CSC is very willing to cooperate with DEQ on this matter. However, because CSC is expecting its insurers to reimburse it for the work it performs at DEQ's request and may seek recovery from other liable parties, CSC must make certain that it is not doing this work "voluntarily" but instead is doing it in response to a DEQ demand under Oregon law. As we look at this issue under Oregon law, we have three concerns about the sampling requested in item numbers 3 and 4:

- 1) That DEQ has requested this sampling without an identified release or threat of release;
- 2) That the proposed sampling is not rationally related to the investigation of any known release or threat of release; and
- 3) That there is no evidence that CSC would be a "liable party" under ORS 465.255 with respect to any releases or threats of releases that items 3 and 4 are intended to investigate.

If it would be of assistance, we would be willing to provide the Department of Justice with our legal analysis of how these legal issues impact this particular site.

CSC simply wants to assure itself that the scope of the investigation conducted under its voluntary cleanup agreement does not exceed the scope of DEQ's legal authority to order an investigation. As you are well aware, CSC has agreed to conduct an expanded preliminary assessment and to reimburse DEQ the costs of its oversight of that work. Please understand that CSC is completely willing to fully investigate any release or threat of release for which it is legally responsible, and it will pay DEQ oversight costs so that DEQ can provide input on that work. However, CSC would be setting itself up for funding someone else's liability (or for not being reimbursed by its insurers, who have not yet responded on this claim) if it were to agree to expand that assessment to include an investigation of someone else's releases of contamination. Performing a voluntary investigation outside the scope of DEQ's legal authority could eventually impact CSC's position vis-a-vis other responsible parties and its own insurers.

Accordingly, it seems there are three ways to resolve this. First, CSC could simply proceed with the sampling on which it has previously reached agreement with DEQ, and then you could determine whether further sampling is required. Second, if DEQ points to a factual basis that legally requires CSC to perform this additional work, CSC will do it under the existing voluntary agreement. Third, if we cannot agree that such a basis exists, and if you believe you have the authority to do so, perhaps the best thing would be for DEQ to issue an order requiring

STOEL RIVES LLP

Mr. Tom Gainer
October 27, 2000
Page 3

this additional component of the work. Under that scenario, CSC could determine whether or not to comply with the order but, if it did, would be in a much stronger position vis a vis other parties and would preserve its legal rights to seek reimbursement for its costs.

As I think we have emphasized several times, CSC is interested in working with you in designing a scope of work that addresses the technical issues and adheres to the mandates of Oregon law. We would like to reach an agreement so we can move forward with the investigation.

Very truly yours,



Christopher G. Winter

cc: Mr. Tom Zelenka
Mr. Matt Cusma
Mr. Ross Ricke
Ms. Joan P. Snyder